

**CHAPTER NO. 1092**

**SENATE BILL NO. 2240**

**By McNally, Atchley**

Substituted for: House Bill No. 2225

By Haley, McDaniel

AN ACT To amend Tennessee Code Annotated, Section 67-4-804, to define "doing business in Tennessee" and "doing business within this state" so that it is clear that the standard for imposing franchise, excise taxes is that allowed by the United States and Tennessee Constitutions.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 67-4-804(a), is amended by adding the following new subdivision:

"Doing business in Tennessee" or "doing business within this state" shall mean any activity purposefully engaged in, within Tennessee, by any business entity named in §§ 67-4-806 and 67-4-903, with the object of gain, benefit, or advantage, consistent with the intent of the General Assembly to subject such entities to the Tennessee franchise, excise tax to the extent permitted by the United States Constitution and the Constitution of the State of Tennessee; provided, however, that any such business entity shall not be considered to be "doing business in Tennessee" or "doing business within this state" for purposes of Parts 8 and 9 of this chapter solely because of any one of the following activities:

(A) Ownership of a limited partnership(s) interest when the activities of such owner are limited as follows:

(i) The limited partner's only business activity in Tennessee is the holding of a limited partnership interest in a partnership(s) located in or doing business in Tennessee; and

(ii) The limited partner has no right to exercise any power, management or control over the partnership(s), except such powers or capacities outlined in T.C.A. § 61-2-302 that limited partners may exercise without participating in the management or control of the partnership, and the limited partner, in fact, exercises no such power, management or control over the partnership(s).

(B) Ownership of a membership interest in a board-managed limited liability company located in or doing business in Tennessee; provided that such owner is not on the limited liability company's board and does not exercise any power, management or control over the limited liability company, except the power to vote in the election of board members.

(C) The presence of employees and/or product samples and/or other promotional materials at one or more trade shows, exhibits, conventions, or similar events in this state for a total of not more than

twenty days per calendar year; provided, however, that the activities of the entity's employees while in Tennessee are limited to maintaining or facilitating the trade show or convention; the purchasing of goods on behalf of their employer; the solicitation of sales; and the gathering of samples, promotional material or other information offered at the event.

(D) Activities by publishers of magazines and books, who contract with Tennessee printers for the printing of their magazines or books, when such activities in Tennessee are limited solely to activities having to do with the printing, storage, labeling and/or delivery to the United States mail or common carrier of such magazines or books; or the maintenance of raw materials with respect to such activities; or the maintenance of employees solely in connection with the production and quality control of such printing, storage, labeling and/or delivery; provided that the publisher and printer are not affiliated with one another. Entities are affiliated with one another if either directly or indirectly controls the other, or if the entities are directly or indirectly controlled by a common parent.


(E) Physical presence in this state of an out-of-state entity's equipment, tooling, inventory, and employees on a temporary basis, when (1) the activity in which such items and employees are engaged is not the pursuit, creation or maintenance, by the out-of-state entity or any entity that is affiliated with it, of a market in this state; (2) the equipment and tooling are not used, worked on or held in this state by an entity that is affiliated with the out-of-state entity; (3) the out-of-state entity's employees have no control over the use or work done in this state by the in-state entity; and (4) the extent and value of such items, the number of such employees, and the number of days the employees work in this state, in light of all the facts and circumstances, are qualitatively and quantitatively de minimis. Entities are affiliated with one another if either directly or indirectly controls the other, or if the entities are directly or indirectly controlled by a common parent.

(F) The temporary presence in this state of employees solely for the purpose of purchasing goods from vendors in this state for use in the employer's business out-of-state; provided that the total number of days the employer has one or more employees present in this state does not exceed thirty per calendar year; and further provided that the employer does not furnish, directly or indirectly, any office in this state for their use.

SECTION 2. This act shall take effect upon becoming law, the public welfare requiring it.

PASSED: April 29, 1998

  
JOHN S. WILDER  
SPEAKER OF THE SENATE

  
JIMMY NAIFEH, SPEAKER  
HOUSE OF REPRESENTATIVES

APPROVED this 19<sup>th</sup> day of May 1998

  
DON SUNDQUIST, GOVERNOR